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Filed Electronically

October 24, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 Twelfth Street, N.W.
Washington, D.C. 20554

Re: Written *Ex Parte* Communication
Universal Service Contribution Methodology (CC Docket Nos. 96-45, 98-171,
90-571, 92-237, 99-200, 95-116, 98-170, and NSD File No. L-00-72).

Dear Ms. Dortch:

The attached written *ex parte* presentation concerning the above-referenced proceeding was sent to William Maher of the Wireless Telecommunications Bureau by the undersigned on October 24, 2002. In accordance with § 1.1206(b)(1) of the Commission's rules, this notice and a copy of the referenced letter are being filed with the Secretary's office for inclusion in the public record. Should you have any questions, please contact me at (202) 589-3760.

Sincerely,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive, slightly stylized font.

John T. Scott, III

Attachment



Verizon Wireless
1300 Eye Street, N.W.
Suite 400 West
Washington, D.C. 20005

October 24, 2002

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Written ex parte presentation, Universal Service Contribution
Methodology (CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200,
95-116, 98-170, and NSD File No. L-00-72).*

Dear Mr. Maher:

This letter responds to the letter dated October 10, 2002, from counsel for the Coalition for Sustainable Universal Service ("CoSUS"). CoSUS disputes showings by Verizon Wireless and other parties that the revenue-based assessment mechanism meets all statutory requirements and can be reformed to ensure universal service sustainability. In fact, the revenue-based contribution methodology remains the most sustainable and non-discriminatory means of collecting the substantial sums that are necessary to fund federal universal service programs. With the overall size of the fund almost doubling in the past six years, the revenue-based system has raised necessary funds to meet the demand. The existing system can be adjusted to keep pace with market realities. In contrast, CoSUS's proposal and other proposals to shift to a per-connection mechanism threaten the statutory scheme for funding universal service.

CoSUS absurdly claims that a proxy system used to estimate the appropriate share of wireless carrier contribution (i.e., the safe harbor) is inherently discriminatory, while maintaining that its proposal to *eliminate* contributions by IXC's (except in limited circumstances) is not. The statute clearly states that *all* providers of interstate telecommunications shall contribute to USF in an equitable and non-discriminatory manner.¹ The first step must be to ensure that all providers in fact contribute. Next, the Commission must devise reasonable methods for all

¹ As Verizon Wireless and a number of other commenters have argued, the per-connection proposal violates the statute by not assessing "[e]very telecommunications carrier that provides interstate telecommunications services," and because its failure to require contributions for interstate interexchange services is not "equitable and nondiscriminatory." 47 USC § 254(d). The proposal is also unlawful because it would impermissibly assess intrastate revenues, and because no reasoned basis has been provided for the Commission to adopt an assessment mechanism that it previously explicitly rejected. *See* Comments of Verizon Wireless (filed April 22, 2002) at 3-5, 7-12.

interstate providers to contribute a fair share. Contrary to CoSUS's claim, the wireless safe harbor is not discriminatory.

The Commission adopted the safe harbor in 1998 as an appropriate means for CMRS carriers to estimate their percentage of interstate revenues for USF reporting purposes, and it has served that purpose, resulting in significant contributions from the CMRS sector to the universal service fund. The October 10 CoSUS letter draws the wrong conclusion about which proposal is anti-competitive and discriminatory. It is CoSUS's own connection-based proposal that would give the IXC industry a significant, unlawful competitive advantage over the wireless industry by shifting IXC regulatory obligations onto the bills of wireless customers.

The CoSUS letter offered an example of a hypothetical customer with 100 minutes of long distance calling who is considering shifting that usage to a wireless plan. According to the letter, the safe harbor would allow the wireless carrier to classify only the safe harbor percentage of the revenue from those minutes as interstate, while a landline IXC would have to recognize all of the minutes as interstate. This example is misleading, however, because it looks only at *incremental* long distance usage of a *single customer*. In reality, customers do not buy such increments of services and, when they purchase wireless service, do not buy only long distance service. The revenue-based mechanism assesses carriers based on their entire retail telecommunications revenues. The safe harbor provides a useful and reasonable mechanism for determining the proper proportion of interstate and international revenues according to wireless traffic patterns. It is appropriate and legally required that wireless carriers not be assessed based on their provision of intrastate services.

Applying the per-connection approach to the same hypothetical demonstrates the truly discriminatory effect of the connections-based approach. If a wireline customer in fact wanted to purchase wireless service to substitute for her IXC service, the customer would face a \$1 (or more) universal service assessment on her new wireless bill,² while facing no incremental charge for retaining the IXC as her long distance provider. Couple this with the fact that IXCs are benefiting from reduced access charges (that have fueled the growth of the USF) and the picture is clear: wireless carriers face a doubling (or more) in USF fees, while IXC customers would face little or no fees whatsoever.

CoSUS also complains that the wireless safe harbor has functioned as a "cap" on wireless contributions, allegedly with discriminatory results. This is, of course, an equally absurd point. The Commission set the safe harbor at what it deemed was the appropriate level, and it can

² Given the fact that some wireless customers make no calls over the course of a month (i.e., glove-box safety users), a \$1 fee would be disproportionately burdensome and completely unrelated to interstate calling or use of the interstate network, violating § 254(d). Moreover, a family with 4 cell phones would face a monthly USF charge of \$4, even if only one of those phones is used for interstate calling.

modify it. The obvious solution if the safe harbor has become a “cap” is to *raise* it -- not to disregard the entire revenues-based scheme. As Verizon Wireless has noted in its comments, the Commission should review the safe harbor process and recalibrate it as necessary to reflect the appropriate balance of interstate traffic and revenue.³ The Commission can revisit the percentage level periodically to make sure it is an appropriate proxy.

Indeed, *any* potential contribution methodology would require some type of simplifying assumption. CoSUS’s own per-connection approach requires complex equivalency ratios to estimate a contribution amount for high-capacity connections. By grouping high-bandwidth connections into capacity tiers, the per-connection proposals would create a situation where connections at the lower end of a tier are effectively “over-assessed” while those at the high end of a tier are “under-assessed.” More fundamentally, however, CoSUS’s capacity tiers concept acknowledges that such an administrative simplification is needed. This is no different than a wireless safe harbor.

Moreover, the wireless safe harbor could be phased out over time once all wireless carriers put in place systems to track their interstate usage. The CTIA *ex parte*⁴ lays the groundwork for the Commission to adopt uniform procedures for carriers to use to measure their interstate minutes. Verizon Wireless stands ready to assist the FCC in this process. Appropriate procedures would allow wireless carriers to report their interstate revenues with reasonable accuracy even if bundling trends change over time. As one of the carriers that submitted data to CTIA, Verizon Wireless is aware of the significant modifications to systems that are necessary to track interstate usage. Some CMRS carriers may need time to implement tracking systems. A recalibrated safe harbor can provide a reasonable proxy in the interim.

Where the CoSUS proposal is most dangerous, however, is the threat it presents for the sustainability of universal service funding. Given the steady growth in the size of the universal service fund, to almost \$7 billion today, it is shortsighted to exclude or limit the largest category of interstate service, interexchange service, from contribution obligations – particularly where the statute requires all providers of interstate telecommunications to contribute equitably.

The CoSUS plan presents other threats to sustainability as well. A charge of \$1 or more on wireless and local wireline services would be more than a 100% increase over current assessments, and there is every reason to believe that per-connection charges under CoSUS would increase significantly with continued growth of the fund. Indeed, CoSUS has already backpedaled on its original assurances as to the size of the multi-line business residual charge.⁵

³ See Reply Comments of Verizon Wireless (filed May 13, 2002) at 24.

⁴ Ex parte letter of CTIA (filed Sept. 30, 2002) at attachment.

⁵ Verizon Wireless has submitted data showing that an assessment of \$1 on wireless, residential, and SLB lines would result in a residual MLB charge substantially above CoSUS’s estimate. Ex parte letter of Verizon Wireless (filed October 3, 2002).

The large users' group recently has dropped out of the coalition due to concerns that the estimates initially offered by CoSUS, and cited in the Further Notice, significantly understate the actual burden that would fall on business customers.⁶ Now AT&T, too, has withdrawn its support for the per-connection approach.⁷ At this point, given that the record is hopelessly unclear about the potential effects on different industry sectors and customers groups, the Commission cannot make a reasoned decision that a per-connection mechanism would be non-discriminatory and otherwise consistent with the statute. Indeed, the spate of changes to parties' positions, proposals and submitted data – particularly so late in the proceeding – creates the strong likelihood that an FCC decision to adopt a per-connection mechanism, on the present record, would be arbitrary and capricious.

Given that even COSUS now acknowledges that it would take *at least a year* for it to fully implement the per-connection plan that was noticed for comment, the Commission should embrace the new data provided by the wireless industry to craft a revised safe harbor that will help promote a sustainable revenue-based funding system, at least on an interim basis. The per-connection proposals present no hope for implementation during 2003. In contrast, minor changes to the revenue-based mechanism can be implemented in relatively short order.

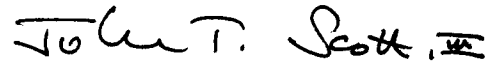
⁶ Ex parte letter of Ad Hoc Telecommunications Users Committee (filed October 3, 2002) at 3.

⁷ Es parte letter of AT&T (filed October 22, 2002) at 2. In withdrawing their support for CoSUS's per-connection approach, both Ad Hoc and AT&T have both expressed support for an assessment mechanism based on telephone numbers. This approach has many of the same shortcomings of the connection-based proposals, and Verizon Wireless will respond to it in a subsequent ex parte letter.

William Maher, Chief
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The proposed connection-based plans are illegal and threaten the sustainability of the fund. The revenue-based mechanism is by far the most promising means of reaching the Commission's universal service funding goals. Verizon Wireless urges the Commission to retain a revenue-based contribution mechanism.

Sincerely,

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line under the "III".

John T. Scott, III

cc: Christopher Libertelli
Matthew Brill
Jordan Goldstein
Daniel Gonzalez
John Rogovin
Sonja Rifken